



UNITED STATES GOVERNMENT  
**NATIONAL LABOR RELATIONS BOARD**  
FREEDOM OF INFORMATION ACT BRANCH  
Washington, D.C. 20570

Via email

December 5, 2022

Re: FOIA Request NLRB-2023-000244

Dear Mr. Jakob Cordes (WRIC.com):

This is in response to your request, under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, received on October 31, 2022, in which you seek "Update to previous FOIA request concerning case 05-CA-296459 to add the three new RD Orders issued on 10/27 and 10/31". You did not assume financial responsibility for processing your request.

We acknowledged your request on October 31, 2022. On November 14, 2022, in a telephone call with a member of the FOIA staff, you agreed to narrow your request to the RD Order issued on October 31, 2022, in *Starbucks Corporation*, Case No. 05-CA-296459.

Your request is granted in part and denied in part, as explained below.

A search of the Agency's electronic casehandling system, NxGen, has been conducted. This search has located the requested RD Order (one page). No information has been withheld from this RD Order.

Your request is denied to the extent that certain responsive records which are part of the investigative file in this open case, including the attachments to the October 31, 2022 Regional Director's Order Referring Petition to Revoke Subpoenas Duces Tecum to the Administrative Law Judge are being withheld, as they exempt from disclosure pursuant to Exemption 7(A) of the FOIA. 5 U.S.C. § 552(b)(7)(A). Exemption 7(A) allows an agency to withhold records included in an open investigatory file where disclosure could reasonably be expected to interfere with enforcement proceedings. See *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 236 (1978). Given the open status of the case and the resultant harm that could reasonably occur with disclosing investigatory case file records while the proceedings are ongoing, I am withholding any such records in full at this time.

Please be advised that Exemption 7(A) protection is "temporal in nature." *Citizens for Responsibility & Ethics in Wash. v. Dep't of Justice*, 746 F.3d 1082,

1097 (D.C. Cir 2014) (citing *NLRB v. Robbins Tire*, 437 U.S. 214, 223-24 230-32 (1978)). That is, case file records may become disclosable, subject to applicable exemptions, after the case closes, a certification of results has issued, a bargaining representative has been certified, or the matter is otherwise closed under Agency procedures. Accordingly, you may wish to file a new request at that time.

The status of this case can be tracked on the Agency website at [www.nlr.gov](http://www.nlr.gov) by going to the Cases & Decisions tab, clicking case search, entering the case number in the search box and viewing the case page or by clicking the link here: [www.nlr.gov/search/case/05-CA-296459](http://www.nlr.gov/search/case/05-CA-296459).

For the purpose of assessing fees, we have placed you in Category C, as a representative of the news media, in that you qualify as a person “actively gathering news for an entity that is organized and operated to publish or broadcast news to the public.” NLRB Rules and Regulations, 29 C.F.R. § 102.117(d)(1)(vii). Accordingly, there is no charge assessed for this request.

You may contact Brenna Schertz, the FOIA Attorney-Advisor, who processed your request, at (202) 273-0064 or by email at [Brenna.Schertz@nlrb.gov](mailto:Brenna.Schertz@nlrb.gov), as well as the Agency’s FOIA Public Liaison, for any further assistance and/or to discuss any aspect of your request. The FOIA Public Liaison, in addition to the FOIA Attorney-Advisor, can further explain responsive and releasable agency records, suggest agency offices that may have responsive records, and/or discuss how to narrow the scope of a request in order to minimize fees and processing times. The contact information for the Agency’s FOIA Public Liaison is:

Kristine M. Minami  
FOIA Public Liaison  
National Labor Relations Board  
1015 Half Street, S.E., 4<sup>th</sup> Floor  
Washington, D.C. 20570  
Email: [FOIAPublicLiaison@nlrb.gov](mailto:FOIAPublicLiaison@nlrb.gov)  
Telephone: (202) 273-0902  
Fax: (202) 273-FOIA (3642)

After first contacting the Agency, you may additionally contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA dispute resolution services it offers. The contact information for OGIS is:

Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road-OGIS  
College Park, Maryland 20740-6001

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Email: [ogis@nara.gov](mailto:ogis@nara.gov)

Telephone: (202) 741-5770

Toll free: (877) 684-6448

Fax: (202) 741-5769

You may obtain a review of this determination under the NLRB Rules and Regulations, 29 C.F.R. § 102.117(c)(2)(v), by filing an administrative appeal with the Division of Legal Counsel (DLC) through FOIAonline at: <https://foiaonline.gov/foiaonline/action/public/home> or by mail or email at:

Nancy E. Kessler Platt  
Chief FOIA Officer  
National Labor Relations Board  
1015 Half Street, S.E., 4<sup>th</sup> Floor  
Washington, D.C. 20570  
Email: [DLCFOIAAppeal@nlrb.gov](mailto:DLCFOIAAppeal@nlrb.gov)

Any appeal must be postmarked or electronically submitted within 90 calendar days of the date of this letter. Any appeal should contain a complete statement of the reasons upon which it is based.

Please be advised that contacting any Agency official (including the FOIA Specialist, Attorney-Advisor, FOIA Officer, or the FOIA Public Liaison) and/or OGIS does not stop the 90-day appeal clock and is not an alternative or substitute for filing an administrative appeal.

Sincerely,

*/s/ Synta E. Keeling*

Synta E. Keeling  
FOIA Officer

Attachment: (one page)